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Jackson County, NC
Joe Hamilton Register of Deeds

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DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
THE COVE AT FLAT GAP

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THIS DECLARATION is made by Generations Land Companies, LLC. ("Declarant") this 22nd day of June, 2006.

WITNESSETH

Declarant is the owner and developer of real property located in Cullowhee Township, Jackson County, North Carolina, as described in deeds recorded June 15, 2006 in Book 1595, Page 88, Book 1595, Page 107, and in Book 1595, Page 114, Jackson County Public Registry; and

Declarant is developing and subdividing said real property into a subdivision known as The Cove at Flat Gap Subdivision (the "Subdivision"); and

Declarant intends by this Declaration to impose upon the Subdivision mutually beneficial restrictions, easements, for covenants and conditions under a general plan of improvement and development the benefit of all owners of property within the Subdivision;

NOW THEREFORE, Declarant hereby declares that all of the Lots in the Subdivision shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions for the purpose of protecting their value and desirability. This Declaration shall run with the land and shall be binding on all parties having any right, title or interest in the Subdivision their heirs, successors, successors in title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1: USE RESTRICTIONS

1.1 SINGLE FAMILY DWELLING: Only one Single Family Dwelling may be constructed per Lot. No outbuildings of any kind may be constructed, except that for each Single Family Dwelling constructed, a one, two or three car garage may be constructed, which may be detached from the Single Family Dwelling, and one small storage building may be constructed, provided prior written permission is obtained from the Architectural Review Committee. No residence, building, or any other structure shall be built or maintained within 30 feet from any property line or the edge of any roadway easement, unless a variance is first obtained in writing from the Architectural Review Committee.

1.2 SQUARE FOOTAGE: Each principal residence constructed on any Lot shall consist of not less than 1800 square feet of enclosed heated floor space. If the residence contains two floors, the main floor must contain at least 1500 square feet enclosed heated floor space. The area of unfinished basements shall not be included in computing said square footage requirements. No building constructed on any lot may exceed 2 stories in height (a basement will not be included in the counting of stories in height). The landscaping and grassing of each Lot shall be completed within 1 year from the time any construction begins on any Lot. All exterior construction shall be completed within 1 year after it has commenced.

1.3 RESIDENTIAL USE: Each Lot shall be used for single family residential and recreational purposes only. No manufacturing establishment, factory, public garage, sanitarium or hospital, motel, hotel, bed and breakfast, child care operation, trailer park, apartment building, condominium, multi-family housing building, or any building of similar nature may be maintained on the same. There shall be no single-wide mobile homes/manufactured homes, no double-wide mobile homes/manufactured homes, no modular buildings, no previously constructed homes, systems built homes or buses situated on any Lot as a residence or for storage, either temporarily or permanently.

1.4 HOME OFFICE is permitted so long as: (i) the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the activity conforms to all zoning requirements for the Properties; (iii) the activity does not involve door-to-door solicitation of residents of the Properties; (iv) the activity does not increase traffic or include frequent deliveries within the Properties; and (v) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. No business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

1.5 LOT SIZE: No lot, with the exception of those lots owned by Declarant, shall be further divided, however, Declarant shall have the absolute right, in Declarant's sole discretion, to combine and divide or re-divide any lots owned by Declarant and to place on record, plats of any such combined, divided or re-divided lots and to submit or withdraw said lots from the provisions of these covenants without the consent or joinder of the owners of the other lots or The Cove Property Owners Association in The Cove Subdivision. Without the Declarant's prior written consent, no Lot shall be subdivided or its boundary lines changed after a subdivision plat depicting the Lot has been approved and filed in the Public Records.

1.6 CONSTRUCTION MATERIALS: No building constructed on any Lot shall have tar paper, asbestos, unfinished plywood, exposed sheet goods, or rough hewn irregular edged type siding. No building constructed on any Lot shall have a mansard type roof or flat roof. No building constructed on any Lot shall have an exposed metal chimney. No residence constructed on any Lot shall have visible concrete blocks, and any and all concrete blocks used in construction on any Lot shall be covered with stone, stucco, wood, masonry such as "Hardie plank" limited use of brick with approval of the ARB, or similar siding. All construction must be performed using new materials only, or using antique architectural materials.

1.7 UTILITIES: All utility lines, including all electrical, telephone, cable television, water and sewer lines, installed in the Subdivision shall be installed underground. There shall be no utility poles, of any kind, placed on any lot within the Development.

1.8 DRAINAGE AND GRADING: Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or alter the drainage flows after installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot, and for controlling the natural and man-made water flow from its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(c) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

1.9 IRRIGATION: Owners shall not install irrigation systems which draw upon ground or surface waters nor from any stream nor from any community well or other bodies of water within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility. The Architectural Review Board has full authority to review or reject applications for systems.

1.10 STREAMS: No streams which run across any Lot may be dammed, or the water impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 9.

1.11 WETLANDS: All areas designated as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers, the North Carolina Department of Natural Resources or any successor thereof responsible for the regulation of wetlands.

1.12 TEMPORARY STRUCTURES: Subject to the Declarant's and Builder/Owner's rights reserved herein, and other than for temporary facilities as might be installed by

Declarant or the Association for purposes of administration of the Properties, no structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, or other outbuilding shall be permitted, maintained or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently without prior written approval by the Architectural Review Board. No garage, servants' quarters, or other permitted accessory structure shall be erected, placed, or maintained on any Lot until construction of a main Residential Unit has commenced. Subject to Article 9, any structure on which construction has commenced must be completed within a reasonable length of time.

1.13 ABOVE GROUND POOLS AND OUTDOOR SPAS: Above ground swimming pools shall be prohibited from the Lots. Outdoor Spas/ Hot Tubs shall be subject to approval under Article 9.

1.14 OIL AND MINING: No oil drilling or development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or minerals shall be erected, maintained, or permitted upon any Lot.

1.15 LEASING: Lots may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association and obligate the tenant to comply with the foregoing. Lots may be leased for residential purposes for a single family only.

1.16 VEHICLES: All vehicles shall be subject to such reasonable rules and regulation as the Board of Directors may adopt.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Lots unless otherwise approved by the Architectural Review Board; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on trails, paths, or unpaved Common Area except for public safety vehicles and as specifically authorized by the Board.

(b) Recreational vehicles belonging to Owners or occupants of the Lots shall be parked only in the recreational vehicle storage area within the Properties, or in garages, if any, serving the Lots or, with the prior written approval of the Architectural Review Board, other hard-surfaced areas which are not visible from the street. "Visibility" shall be determined by the Architectural Review Board in its sole discretion. Guests of an Owner or occupant may park a motor or mobile home on the driveway serving the Owner's or occupant's Lot for a period not to exceed seven (7) Days each calendar year. The term "recreational vehicles", as used herein, shall include, without limitation, motor

homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, campers, buses, and camper trucks and vans. Any recreational vehicle parked or stored in violation of this provision in excess of seven (7) days shall be considered a nuisance and may be removed from the Properties. For purposes of this paragraph, golf carts shall not be considered a recreational vehicle. Fees and costs for removal and storage under this provision shall be assessed against the Lot as a Specific Assessment. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) Without prior written approval and authorization of the Board of Directors, no boats, boat trailers, campers, canoes, motorcycles, mopeds, all terrain vehicles, vehicles used primarily for recreational purposes, vehicles primarily used for commercial purposes, abandoned vehicles, vehicles which are either dismantled, partially dismantled, inoperative, discarded or one which does not have a valid license plate attached thereto, shall be stored, allowed to remain, or repeatedly parked on the Properties subject to this Declaration, except in any area, if any, designated by the Board of Directors. No vehicles shall be parked on the Common Area other than in authorized parking areas. No vehicles shall be parked or stored on blocks or other such devices on the Common Area or other portion of the Properties visible from the Common Area. No vehicles shall be parked so as to obstruct the fire lanes or roadways within the Properties. If permitted, boat trailers, boats, campers, motorcycles, mopeds, all terrain vehicles, vehicles primarily used for recreational or commercial purposes, travel trailers or inoperative automobiles are to be stored out of view from the streets and shall not be stored in any street right-of-way or on driveways. The Association is expressly authorized to remove, by towing or other methods, at the Owner's expense, vehicle in violation hereof.

(e) All vehicular traffic on the private streets and roads within the Properties shall be subject to the provisions of the laws of the State of North Carolina and Jackson County concerning operation of motor vehicles on public streets. The Board is hereby authorized to promulgate, administer, and enforce reasonable Rules and Regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits including modifications of those in force on public streets, within the Properties. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines.

(f) Motorcycles are prohibited from using the subdivision roads and common areas, except that a properly licensed and registered motorcycle may use subdivision roads for purposes of ingress, egress and regress for legitimate purposes of transportation to and from work into and out of the Subdivision. The operation of all-terrain vehicles (ATV's) and motorized mountain bikes for recreational purposes within the Subdivision is hereby prohibited. Golf carts are permitted subject to the following restrictions:

- a. No one under the age of sixteen (16) may operate a golf cart in the subdivision unless accompanied by an adult over the age of twenty-one (21);
- b. Golf carts are only allowed on subdivision roads for the purpose of traveling to or from another lot or a common area within the Subdivision;
- c. No golf carts can be operated in a reckless manner so as to create a likelihood of injury to persons or property;
- d. No golf carts can be operated in such a manner as to become a nuisance.

It is the intention of this restriction to prohibit sport riding or joy riding upon motorcycles, golf carts and similar vehicles within the boundaries of the Subdivision and to completely prohibit the use of ATV's.

1.17 ANIMALS AND PETS: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot nor within any Residential Unit, except that dogs, cats or other usual household pets may be kept by the respective Owners on their Lot and within their Residential Unit, provided that they are not kept, bred or maintained for any commercial purpose and do not endanger the health of or unreasonably disturb the Owner of any Lots within the Community; provided that the Board of Directors may, by adoption of Rules and Regulations, (i) prohibit from the Properties animals which are determined by the Board to be dangerous or detrimental to the health, safety or welfare of the Owners and (ii) prohibit any respective pet from travel upon or use of the Common Area unless the owner of such pet pays a user fee to the Association in an amount determined by the Board. In addition, Rules and Regulations may include but not be limited to the prohibition of animals as to size, weight or type. No pet enclosure shall be erected, placed or permitted to remain on any Lot subjected to this Declaration except as approved pursuant to Article 9. In the event a pet or pets become a nuisance in the opinion of the Declarant or the Board, they shall be removed from the Properties.

1.18 NUISANCE: It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. The Properties shall not be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Properties. The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

1.19 GARBAGE: All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris, rubbish, trash or garbage, petroleum products, fertilizers, or other potentially hazardous or toxic substances on wetlands or

marsh areas or in any drainage ditch or stream within the Properties or in other areas visible to the public, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff. No burning of garbage shall be done or permitted on any Lot. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Lot, except as may be permitted during any period of construction of improvements to a Lot.

1.20 COMBUSTIBLE LIQUID: Storage of gasoline, propane, heating or other fuels is prohibited, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the Architectural Review Board. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

1.21 HUNTING is not allowed in the Subdivision and there shall be no Archery or use of bow and arrow and no firearm shall be discharged, including "B-B" guns and pellet guns, within the Development.

ARTICLE 2: PROPERTY RIGHTS

2.1 DEVELOPMENT: Except as otherwise set forth in Section 1, all Lots within the Properties (i) shall be and are hereby restricted exclusively to single-family residential use (ii) shall be developed and built upon only for detached single family dwelling purposes and (iii) shall be subject to the standards and restrictions set forth in this Declaration including, specifically, Article 9 and any Design Guidelines adopted pursuant to this Declaration. Declarant shall have the right, but not the obligation, during the Development Period to make improvements and changes to all Common Area and to all Lots owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Area, (ii) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Area (or any of the Additional Property submitted to the terms hereof), (iv) installation and maintenance of any water, sewer, and other utility systems and facilities, and (v) installation of security and/or refuse facilities. The Declarant shall have the responsibility of constructing all roads up to the standard of a well-graded, well-graveled, well-ditched, and well-drained private road, but after such construction the Declarant shall not have any further responsibility with regard to the roads and the maintenance and upkeep of said roads shall be the responsibility of the Association. Each Lot shall be assessed equally for the costs of the maintenance, repair and upkeep of the roadways maintained by the Association, provided that the Declarant shall not be assessed for any reason for more than ten (10) Lots.

2.2 DEVELOPMENT OF ADDITIONAL PROPERTY: Declarant hereby reserves the option, right and privilege (but not the obligation), to be exercised in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Properties. This option, right or privilege may be

exercised only by Declarant in accordance with the terms, conditions, and limitations set forth in Article 8.

2.3 SUBDIVISION PLAT: Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, Subdivision Plat(s) setting forth such information as Declarant may deem necessary with regard to the Properties, including, without limitation, the locations and dimensions of the Lots, Common Area, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements, and set-back line restrictions. Until the time a Lot within a respective Parcel or Phase is transferred by the Declarant to another (other than a Builder/Owner, an affiliate of Declarant, or a holder of a First Mortgage), no Owner of any Lot or Residential Unit shall have any rights whatsoever to the continuation of any covenants, or restrictions on such Parcel or Phase as contained herein or as may be imposed, expressly or impliedly, by recordation of any Subdivision Plat or as might otherwise be implied or expressed. In furtherance thereof, until the time a Lot within a respective Parcel or Phase is transferred by the Declarant as aforementioned, the Declarant may revoke or cancel any Subdivision Plat or other instrument which might be deemed, either expressly or impliedly, to impose any covenants, conditions, or restrictions.

2.4 PROPERTY RIGHTS: Each Lot shall for all purposes constitute real property which may be owned in fee simple and which, subject to the provisions of this Declaration or any Supplemental Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, subject to the provisions of this Declaration, including without limitation, the provisions of this Declaration. Every Owner, including each Builder/Owner, shall have a right and easement of enjoyment in and to the Common Area subject to any restrictions, limitations, or provisions contained in this Declaration.

2.5 COMMON AREA: The Declarant may designate certain portions of the Subdivision as Common Area which thereby shall be reserved for the use of Owners and occupants.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1 MEMBERSHIP: Every person who is the record owner of a fee or undivided fee interest in any Lot which is subject to this Declaration shall have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any such Lot, and such ownership of a Lot which is subject to this Declaration shall be the sole qualification for such membership. In the event that fee title to such a Lot is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include persons who had an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Each Lot and each Lot Owner shall be subject to all duly adopted articles, by-laws, rules and regulations, and resolutions of the

Association, and shall have the obligation to pay to the Association all amounts of money assessed by it. The by-laws of the Association are incorporated by reference herein.

3.2 MULTIPLE OWNERS: No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned; provided, however, multiple use rights for multiple Owners shall exist subject, however, to the right of the Board to regulate and limit use by multiple Owners. Each Owner, by acceptance of a deed or other conveyance for a Lot, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion or portions thereof to the terms of this Declaration as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse.

3.3 VOTING: The Association shall have two classes of membership, Class "A" and "B".

(a) Class "A". Class "A" members shall be all Owners, including Builder/Owners, with the exception of the Class "B" Members. Class "A" Members shall be entitled on all issues to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 hereof. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and if one of such multiple owners exercises the vote without opposition by any other of such multiple owners at the same time such vote is exercised, the vote shall be as so exercised. In the event more than one of such multiple owners seek to exercise the vote or if any one of such multiple owners disputes any others right to so vote, the Lot's vote shall be suspended.

(b) Class "B". The Class "B" member shall be the Declarant. Until termination of the Class "B" vote, as provided for below, the Class "B" member shall be entitled to three (3) times the total number of then existing Class "A" votes and the Class "B" member may appoint the members of the Board of Directors and Officers of the Association. The Class "B" membership shall terminate upon the happening of the earlier of the following:

(i) unless Declarant has an unexpired option to add Additional Property, one hundred twenty (120) days after one hundred (100%) percent of the approximately 94 Lots as are contemplated to be part of the Community on the master plan thereof, inclusive of Lots as may exist or come to exist with the Additional Property, have been conveyed to Owners other than Builder/Owners or affiliates of Declarant;

(ii) when, in its discretion, the Declarant so determines; or

(iii) on December 31, 2020.

From and after the happening of these events, whichever occurs earlier, the Class "B" member shall be deemed to be a Class "A" member entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1 hereof.

3.4 EXERCISE OF VOTING RIGHTS: In any situation where a Member is entitled to exercise a vote for a Lot and there is more than one (1) Owner of the Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and notify the secretary of the Association in writing prior to the vote being taken. Absent notice to the secretary, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

3.5 DECLARANT CONTROL: Notwithstanding any other provision to the contrary within this Declaration, the Charter or the By-Laws for the Association, Declarant hereby retains the authority and right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association until such time as the Class B membership terminates. Every Grantee of any interest in the Properties, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this section. Upon the expiration of the period in which Declarant maintains the authority and right to appoint and remove members of the Board and officers of the Association, such right shall pass to the Members, including Declarant, if Declarant then owns one or more Lots, and a special meeting of the Association shall be called within one hundred twenty days (120) thereafter. At such special meeting, the Members shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts, executed by or on behalf of the Association during such period in which Declarant has in its possession.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 FUNCTION OF ASSOCIATION: The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 1. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in any Design Guidelines. The Association shall perform its functions in accordance with this Declaration and the laws of North Carolina.

4.2 SERVICES: The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof and any other personnel as the Association's Board of Directors shall determine to be necessary or desirable for the proper operation of the Properties. Such personnel may be furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal, accounting and any other professional services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with others to furnish trash collection, security, cable television, and other common services to each Lot, Residential Unit, or Private Amenities within the Community. All costs and expenses

incident to any of the foregoing shall be a Common Expense payable by the Association.

4.3 POWER TO CONTRACT: The Association may, acting through its Board, enter and make contracts with any and all Parties as determined by the Board

4.4 RULES AND REGULATIONS:

(a) The Association, through its Board, may establish reasonable Rules and Regulations concerning the Subdivision. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Owners, the Declarant prior to the effective date. Such Rules and Regulations shall be binding upon the Owners and users, their families, tenants, guests, invitees, and agents, until and unless such Rules or Regulations requirement is specifically overruled, canceled, or modified by the Board.

(b) All provisions of this Declaration, the By-Laws and any Rules and Regulations promulgated by the Board, the Design Guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and guests and invitees of occupants or Owners. The Owner of each Lot shall be responsible for ensuring that the occupant, and the guests, invitees and licensees of the Owner or the occupants strictly comply with all provisions of the Declaration, By-Laws, Design Guidelines and Rules and Regulations promulgated by the Board. Fines may be levied against Owners or occupants for violations of the Rules and Regulations, Declaration, By-Laws or Design Guidelines. If a fine is levied first against an occupant and is not paid within thirty (30) days, the fine may then be imposed against the Owner of the Lot wherein the occupant resides.

4.5 ENFORCEMENT:

(a) The Board may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws. In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting. Sanctions may include the actions enumerated below. In every instance in which the Board may act, any committee established and approved by the Board, may act in the Board's stead.

(i) The Board may impose reasonable monetary fines which shall constitute a lien upon the Lot of the violator; provided no such fee shall be levied for more than One Hundred Dollars for any one violation; but each day or time a violation is continued or repeated after written notice is given to the Owner to cease and desist, it shall be considered a separate violation. Collection of fines may be enforced against an Owner as if such charges were a Common Expense owed by the Owner involved. In the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

(ii) The Board may suspend an Owner's right to vote.

(iii) The Board may levy Specific Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Article 8 and 9.11.

(b) The Association may also elect to enforce the provisions of the Governing Documents by filing suit at law to recover monetary damages or in equity to enjoin any violation, or both.

(c) In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by self-help as more particularly described in Article 5 and 9 (specifically including, but not limited to the filing of liens for non-payment of assessments and/or notices of violations in the Public Records, the towing of vehicles that are in violation of parking rules and the removal of pets that are in violation of pet rules). Entry onto a Lot under this Section shall not be deemed a trespass.

(d) In any action to enforce the provisions of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, incurred in such action.

(e) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or estop the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce County, City, State or Federal ordinances, laws, or rules if applicable, and permit local governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.6 IMPLIED RIGHTS: The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

4.7 INDEMNIFICATION: The Association shall indemnify every officer, director, and Architectural Review Board or committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, Architectural Review Board or committee

member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Charter and North Carolina law. The officers, directors, and Architectural Review Board or committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, and Architectural Review Board or committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, or Architectural Review Board or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and Architectural Review Board or committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or Architectural Review Board or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.8 SECURITY: The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide any security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

4.9 POWER TO ASSESS: The Association shall have the right and power, as more particularly set forth in this Declaration, to fix, levy, collect, and enforce payment by any lawful means, all charges and assessments pursuant to the terms of this Declaration, to pay all expenses in connection therewith, and all office and other expenses incident to the conduct and affairs of the business of the Association.

Assessments shall be used for the following:

- a. Maintenance and repair expenses for roads, ditches and culverts for platted roadways within The Cove Subdivision with the exception of private driveways and culverts used for access to lots.
- b. Maintenance expenses for entrance, landscaping, fencing and signage.
- c. Maintenance of all Easement areas shown on any subdivision recorded plat or

Master Plan of the Subdivision.

- d. Maintenance of all common grounds.
- e. Electric bills, phone bills, postage and insurance.
- f. Community enhancement (mowing, etc.)
- g. All reasonable administration costs for the perpetual continuation of Association.
- h. The payment of reasonable legal fees to enforce any violation of covenants contained or amended within this recorded document.
- i. All current or future improvement to common grounds.

ARTICLE 5: MAINTENANCE

5.1 ASSOCIATION'S RESPONSIBILITY:

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include all landscaping, structures and improvements, including but not limited to any gates, entry features, fencing, private streets, parking areas, signage situated in the Subdivision;

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof.

(c) The Association shall not be liable for any injury or damage to any personal property (a) caused by the elements, (b) caused by any Owner or by their respective guests, invitees, successors or assigns or (c) resulting from any rain or other surface water which may leak or flow from any portion of the Common Area. Nor shall the Association be liable to any Owner for any loss or damage, by theft or otherwise, of any property of such Owner or their respective guests, invitees, successors or assigns which may be stored in or upon any portion of the Common Area or any portion of the Properties. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform such function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or governmental authority, the obligation to pay each such assessment being a separate and independent covenant on the part of each Owner.

5.2 OWNER'S RESPONSIBILITY:

(a) Each Owner shall maintain his or her Lot, including the Residential Unit thereon, and all structures, parking areas, sprinkler and irrigation

systems, landscaping and other flora, and other improvements comprising the Lot, including the Residential Unit thereon, in a manner consistent with this Declaration.

(b) In the event the Board of Directors of the Association determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or his or her family, guests, lessees, or invitees, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at their sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary and the cost thereof. The noticed party shall have ten (10) days within which to pay such amount claimed; or, in the event such maintenance or repair is to the Owner's Residential Unit or Lot, complete said maintenance, repair, or replacement; or, in the event that such maintenance, repair, or replacement is not capable of completion within said ten (10) day period, to commence such work within said ten (10) day period which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such person's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such party is subject and shall become a lien against the Lot of such party collectible as an assessment pursuant to Article 8 hereof. By way of example and not limitation, in the event of an Owner's failure to comply with the provisions hereof, the Association may cause any weeds, grass, trees or landscaping to be cut, pruned or removed, as the case may necessitate, and may remove or cause to be removed such garbage, trash or rubbish as has accumulated thereon. Such shall expressly include removal of dead or diseased trees or landscaping.

(c) In addition to the foregoing, the Association may do anything necessary to secure compliance with this Declaration or the Design Guidelines so as to place said Lot in a neat, attractive, healthful, and sanitary condition and the charges incurred for securing such compliance, including the cutting, trimming, pruning, or removal of weeds, grass, landscaping, trees or such garbage, trash or rubbish as may be removed, may be charged to the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the property to pay such statement immediately upon receipt thereof, and such payments made by the Association shall be secured by a lien in the same manner as General Assessments paid the Association under this Declaration.

5.3 STANDARD OF PERFORMANCE: All maintenance shall be performed in a manner consistent with the Community-Wide Standard and this Declaration. Maintenance responsibilities shall include the responsibility for repair and replacement as necessary. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 INSURANCE: The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements or obtain public liability policy.

6.2. LOT OWNER'S RESPONSIBILITY: By virtue of taking title to a Lot each Owner of a Lot covenants and agrees with all other Owners and with the Association to carry all risk casualty insurance. Each Owner, if any, further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of any structure located on a Lot, he or she shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the aesthetic appearance and quality of the original construction and the Community Wide Standards. In the event that any Residential Unit structure is totally destroyed or rendered uninhabitable or unusable and the Owner or owner thereof determines not to rebuild or reconstruct, then that Owner or owner shall clear that Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The obligation of an Owner hereunder specified shall not be applicable to any Owner whose Lot is insured under a casualty insurance policy obtained by an association of owners on his behalf. In the event that any Residential Unit structure is totally destroyed or rendered uninhabitable or unusable and the Owner or owner thereof determines to rebuild or reconstruct, then such Owner or owner shall repair or rebuild such Lot to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration. All such work of repair and construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion within a reasonable time.

ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY _

7.1 ANNEXATION WITHOUT APPROVAL OF CLASS 'A' MEMBERSHIP: As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option (but not the obligation), from time to time at any time until twenty (20) years from the date this Declaration is recorded in the Public Records, subject to the provisions of this Declaration and the jurisdiction of the Association, pursuant to the terms and conditions contained within this Declaration, all or any portion of the Additional Property (and the Private Amenities), whether in fee simple or leasehold, by filing in the Public Records, an amendment or Supplemental Declaration annexing all or any portion of such property. Such amendments to this Declaration or Supplemental Declaration shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of any such amendment or Supplemental Declaration, unless otherwise provided therein. Such amendment or Supplemental Declaration may specify such specific use restrictions and other covenants, conditions, and restrictions to be applicable to the annexed property as Declarant may, in its own discretion, determine. Declarant shall have the unilateral right to transfer to one or more other persons the right,

privilege, and option to annex the Additional Property (and the Private Amenities) which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least that part of said Additional Property or such Private Amenities to which such right, privilege, and option is assigned; and provided, further, such assignment shall not remove or alter Declarant's further right, option and privilege to annex.

ARTICLE 8: ASSESSMENTS

8.1 CREATION OF AND OBLIGATION FOR ASSESSMENTS:

(a) The Board may authorize the creation of assessments for Common Expenses of the Association from time to time, as follows: (i) General Assessments; (ii) Special Assessments; and (iii) Specific Assessments. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to have notice of liability for these assessments and to covenant and agree to pay these assessments.

(b) There are hereby created General Assessments for Common Expenses as may from time to time be authorized by the Board of Directors. General Assessments shall, from and after the respective Commencement Date (as defined herein below) relating to a respective Lot, be levied against such respective Lot and shall be used to pay expenses determined by the Board to be for the benefit of the Association, its Members, and the Properties as a whole, including, but not limited to, maintenance and insurance of the Area of Common Responsibility and expenses otherwise incurred by the Association in accordance with its rights, powers, and privileges for the purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Properties, and maintaining the Properties and improvements therein. The General Assessment levied against and payable by a Lot shall be equal to the General Assessment which is levied against and payable by each such other Lot. Despite anything contained herein to the contrary, the assessments against a respective Lot shall not commence until the Commencement Date as respects such Lot as set forth in Section 8.2 of this Article.

(c) There are hereby created Parcel Assessments for Common Expenses as may from time to time be authorized by the Board of Directors. Parcel Assessments shall, from and after the respective Commencement Date relating to a respective Lot, be levied against such Lots within particular Parcels of the Properties for whose benefit expenses are incurred, such as maintaining and operating facilities and amenities within a Parcel reserved for use of the residents within that Parcel, expenses of enforcing all assessments, covenants, and conditions relating to a respective Parcel, and expenses determined by the Board to be for the benefit of a respective Parcel. Each Lot within a Parcel shall pay a Parcel Assessment equal to each other such Lot within such Parcel. Parcel Assessments established in one Parcel do not need to be equal to Parcel Assessments established in another Parcel. Despite anything contained herein to the contrary, the assessments against a respective Lot shall not commence until the Commencement Date as respects such Lot as set forth in Section 8.2 of this Article.

(d) All such assessments, together with late charges, simple interest at the rate of eighteen percent (18%) per annum, costs and reasonable attorney's fees actually incurred to enforce or collect such assessments, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made regardless of conveyance thereof. The Association's lien shall be prior and superior to all other liens except the lien for ad valorem taxes on the Lot, the lien of any First Mortgage covering the Lot, the lien of any Mortgage recorded prior to the recording of the Declaration and the lien of any secondary purchase money Mortgage covering the Lot, provided neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien for assessments shall be required; provided, however, the Association may record a memorandum of lien in the land records of County to evidence its claim of lien. Each such assessment, together with late fees, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the owner of such Lot at the time the assessment came due, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, any First Mortgagee or holder of a secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Lot who obtains title to a Lot subject to this Declaration pursuant to the remedies provided in such Mortgage or Foreclosure of the Mortgage, will not be liable for such Lot's unpaid assessments which accrued prior to the acquisition of title to such Lot by the Mortgagee. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration of the annual assessment for Owners who are delinquent in the payment of the their assessments. The assessments shall be paid annually in advance, unless otherwise provided by the Board. The Association shall, upon request, furnish to any Owner liable for any type of Assessment a written statement signed by the Association officer setting forth whether the Assessment has been paid. This statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee not to exceed \$25.00 for the issuance of such a statement.

(e) No Owner is exempt from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner which runs with title to the Lot. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2 COMMENCEMENT OF ASSESSMENTS: Any and all assessments shall commence in respect to each respective Lot at the time of conveyance of the respective Lot by the Declarant to an Owner or Builder/Owner other than the Declarant; provided, however, that the commencement of the Assessment against a Lot conveyed to a Builder/Owner by Declarant may be delayed as determined by the Declarant from time to

time for a term of twelve (12) months from and after the date of conveyance to such Builder/Owner or until substantial completion of the Residential Unit on such Lot, whichever first occurs. Declarant shall not be responsible or liable for the payment of assessments (whether General, Parcel, Special or Specific) in respect to Lots for which Declarant holds record title and which do not contain occupied Residential Units (except as hereinafter provided); provided that Declarant covenants and agrees to pay assessments in the same manner as Lots conveyed to Owners for each Lot owned by Declarant containing an occupied Residential Unit. The date of commencement of the assessment as to any particular Lot, as determined aforesaid, is herein sometimes referred to as the "Commencement Date." The first annual assessment for a Lot payable to the Association in respect to such Lot shall be adjusted according to the number of months remaining in the calendar year as of the Commencement Date. Such prorated assessment shall be paid on the Commencement Date or such later date as provided by the Board.

8.3 COMPUTATION OF GENERAL ASSESSMENTS:

(a) General Assessments shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

(b) It shall be the duty of the Board at least forty-five (45) days prior to the commencement of a fiscal year to prepare a budget covering the estimated costs of operating the Association and the Properties during the coming year. The budget shall separately list General and Parcel Assessments, if any. The Board shall cause a copy of the budget and the assessments to be levied therefrom to be (i) available to all Members at a central location on the Properties or (ii) to be mailed to each Member, at least thirty (30) days prior to the date at which such budget will become effective. The budget and assessment established therefrom shall become and be effective unless objected to in a written statement of disapproval executed by at least a majority of the total Association eligible vote and delivered to the Board or Manager no later than seven (7) days prior to the effective date of the proposed budget. Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein or by the procedure herein described repeated as need be, the budget and assessments in effect for the current year shall continue for the succeeding year.

(c) During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense

budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant. To the extent that Declarant pays any amount or provides any in-kind services to the Association, any such payment or provision of services shall be a reduction and credit against any amount as may otherwise be claimed owed by Declarant to the Association with subparagraph 8.3(b) hereinabove.

8.4 SPECIAL ASSESSMENTS: In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be allocated equally among all Lots. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding a Majority of the total Class "A" votes and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for in the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5 SPECIFIC ASSESSMENTS: The Association shall have the power to levy Specific Assessments against a particular Lot or Lots to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as a fine levied pursuant to Section 4.5 or to cover costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

8.6 FORECLOSURE OF THE LIEN FOR ASSESSMENTS: The lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial Foreclosure, as permitted under North Carolina law, including but not limited to North Carolina General Statutes 44A and 47F. The Association may bid for the Lot at the Foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following Foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) the other Lots shall be charged, in addition to the usual assessment, a pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without Foreclosing or waiving the lien securing the same. The sale or transfer of any Lot shall not affect the assessment lien or relieve a Lot from the

lien for any subsequent assessments. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.6, including such acquirer, its successors and assigns. All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that the liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating the liens or encumbrances.

8.7 FAILURE TO ASSESS: Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

ARTICLE 9: ARCHITECTURAL STANDARDS

9.1 ARCHITECTURAL REVIEW BOARD: No construction, improvements, landscaping, vegetation management, buildings, structures or development of any kind whatsoever, shall be commenced, carried out on, constructed, altered, added to or maintained upon any portion of the Properties, including Lots, unless approved in writing by the Architectural Review Board or developed, constructed or altered by Declarant. Approval of the Architectural Review Board shall be subject to such regulations, architectural standards and application procedures as may be promulgated by the Architectural Review Board and as set forth herein. The Architectural Review Board may charge a reasonable fee as determined by the Architectural Review Board, from time to time, to cover the administrative expense of its review and comment, such fee to be payable to the Architectural Review Board by the applicant.

(a) During the Development Period, the Declarant, in its sole discretion, shall appoint the members of the Architectural Review Board. For such time, the Architectural Review Board shall consist of at least three (3) and no more than five (5) members, none of whom shall be required to be residents of the Community or own property at the Community and all of whom shall serve at the pleasure of the Declarant. The Architectural Review Board shall act on behalf of the Declarant and the Association until such time as the Declarant no longer has the right to annex property to the Community pursuant to Article 12 or the Declarant no longer owns any Lot, whichever is later, unless sooner waived in writing by the Declarant. From and after the later of these events, the Architectural Review Board shall be appointed by the Board and function in the same manner as committees of the Association under the authority of the Board.

(b) Following the Development Period, members of the Architectural Review Board shall be appointed by the Board of Directors and the Architectural Review Board members shall be required to be Owners or their spouses or hired design consultants.

Members of the Architectural Review Board as are appointed by the Board shall serve at the pleasure of the Board. During the time that the Architectural Review Board members are appointed by the Board, the Architectural Review Board shall be comprised of at least three (3) no more than five (5) members.

(c) The Architectural Review Board shall elect a chairperson and the chairperson or the vice-chairperson, shall be the presiding officer at its meetings. The Architectural Review Board shall meet as often as they so determine and shall be required to meet upon call of the chairperson, and all meetings shall be held at such places as may be designated by the chairperson. A majority of the Architectural Review Board members serving shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person at a meeting of the Architectural Review Board shall constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board may, from its members, appoint one (1) such member to execute approval of plans as might be proposed by an applicant. The Architectural Review Board shall not be required to maintain minutes of its meetings and any approval of the Architectural Review Board may be evidenced by the members of the Architectural Review Board, or the designate appointed by such members, certifying to the approval of such plans by entry of an approval on the face thereof. Approvals of the Architectural Review Board may occur at meetings thereof or based upon communications by and between the members thereof, without call of a meeting, but with polling of each member thereof by the chairperson or his or her designate.

(d) The Architectural Review Board is authorized to retain services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Board in performing its functions set forth herein and all such expenses shall be at the expense of the Association.

(e) Any member of the Architectural Review Board appointed by the Declarant may be removed with or without cause by the Declarant at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy. Any member of the Architectural Review Board appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee.

(f) The Architectural Review Board is hereby authorized to promulgate from time to time written architectural standards, regulations, policies, procedures and guidelines (hereinafter referred to as the "Design Guidelines") governing the construction, location, landscaping, material and design of improvements, structures, the contents of submission of plans and specifications, and other information as may be required in order to evidence compliance with and obtain approval pursuant to this Article 9. The Architectural Review Board shall make its standards, regulations, policies, procedures and guidelines available to Owners, Builder/Owners, and developers who seek to engage in development or improvement of construction upon all or any portion of the Properties and shall conduct its operations in accordance therewith. Decisions of the Architectural Review Board shall take into account and be founded upon the nature, kind, shape, color, size, material and location of any construction, improvements, buildings, structures or development and the quality of

workmanship planned, the design and harmony of external design and relation to surrounding structures, topography, vegetation, hydrology, and elevation of such construction, improvements, buildings, structures and development and the Community Wide Standards. The Design Guidelines shall be binding upon and enforceable against all Owners. From and after the time that the Board appoints the members of the Architectural Review Board, any Design Guidelines proposed by the Design Review Board and any approvals or denials by the Architectural Review Board shall first be approved by the Board before their being effective.

9.2 SUBMISSIONS TO ARCHITECTURAL REVIEW BOARD:

(a) No construction, improvements, buildings, structures or development of any kind whatsoever, shall be commenced, carried out on, constructed, altered, added to or maintained on any Lot, other than as developed, constructed or altered by Declarant unless and until three (3) copies of the plans and specifications and related data shall have been submitted to and approved in writing by the Architectural Review Board. The Architectural Review Board shall have the right to approve upon submission of a request pursuant to the terms of this Article any modifications, additions or alterations made on or to a Lot.

(b) For purposes of this Article 9 , “construction, improvements, buildings, structures or development” shall include by way of example and not limitation the construction, installation or alteration of Residential Units, sidewalks, driveways, parking areas, basketball goals, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, play equipment, awnings, walls, steps, solar devices, stoops, yard equipment, antennae, fences, exterior lights, garages, landscaping, lawns, guests or servants quarters, or other outbuildings. Plans, specifications and related data as submitted for any such construction, improvements, buildings, structures or development requested for approval shall show the nature, color, type, shape, height, materials and location of the same. One (1) copy of such plans, specifications and related data so submitted shall be retained in the records of the Architectural Review Board and the other copy shall be returned to the Owner marked “approved by the Architectural Review Board,” or “approved as noted by the Architectural Review Board,” or “disapproved by the Architectural Review Board.” Until the members of the Architectural Review Board are appointed by the Board, the Architectural Review Board shall have the sole discretion to determine whether the plans and specification submitted for approval are acceptable to the Architectural Review Board in connection with the approval rights. Any disapproval by the Architectural Review Board may be based upon any ground whatsoever so long as such disapproval is consistent with the objectives and purposes of this Declaration, including, but not limited to, purely aesthetic considerations, provided that such disapproval is not arbitrary or capricious.

(c) The Architectural Review Board shall have the right to establish a maximum percentage of a Lot which can be cleared or graded and a maximum percentage of a Lot which may be covered by Residential Units, buildings, structures or other improvements, which standard shall be promulgated on the basis of topography, percolation data, soil types and conditions, vegetation cover and other environmental factors taken into account by the Architectural Review Board. Following approval of any plans and

specifications by the Architectural Review Board, representatives of the Architectural Review Board shall have the right, without notice, during reasonable hours to enter upon and inspect any Lot, Residential Unit or other improvements or structures with respect to which construction is underway to determine whether or not the plans and specifications thereof have been approved and are complied with. In the event that Architectural Review Board shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Review Board, acting in the name and at the expense of the Association, shall be entitled to enjoin further construction and to require the removal or correction of any work, improvement or structure in place which does not comply with the approved plans and specifications.

(d) In the event that the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the conventions identified on the Lot Portfolio for that lot and the Design Guidelines. Upon the approval of plans and specifications by the Architectural Review Board, no further approval under this Article 9 shall be required with respect thereto, unless construction has not substantially commenced within ninety (90) days of approval of such plans and specifications or unless such plans and specifications are materially altered or changed. For purposes of this section, "substantially commenced" shall mean any clearing, grading, pouring of footing or any other type of affirmative action to commence with the construction of a Residential Unit.

(e) No landscaping, grading, excavation or filling shall be implemented and installed on a Lot, other than by Declarant, unless and until the plans have been submitted to and approved in writing by the Architectural Review Board. The provisions of this Article 9 regarding the time for approval of plans, the right to inspect, the right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling. The Architectural Review Board shall be permitted to promulgate Design Guidelines with regard to any such landscaping, grading, excavation or filling. These improvements shall comply with the conventions identified on the Lot Portfolios.

(f) Before construction of any Residential Unit on any Lot begins and is part of the approved plan regarding such Residential Unit as submitted to the Architectural Review Board, the Architectural Review Board shall be provided a general landscape design which shall be reviewed and approved by it before commencement of the installation of landscape.

(g) Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Residential Unit or to paint the interior of his or her Residential Unit any color desired, so long as the same is not visible from outside the Residential Unit.

9.3 COMMENCEMENT OF CONSTRUCTION: Residential Units may not be temporarily or permanently occupied until the exteriors thereof and the landscaping of the Lot on which the Residential Unit is located have been completed and a certificate of

occupancy for such Residential Unit, if issued by the local jurisdiction, has been issued. Once commenced, the construction of a Residential Unit and original improvements contemplated therewith on a Lot shall diligently be continued and shall be completed within twenty-four (24) months from the date of commencement. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the Architectural Review Board; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Lot. During the continuation of construction of any Residential Unit, structure or improvements respecting a Lot or any modifications, additions or alterations thereto, any and all contractors in respect to the construction thereof shall maintain the Lot, the Residential Unit, and the surrounding Common Area in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, the Owner of the Lot shall cause such contractors to immediately remove all equipment, tools and construction material and debris from the Lot and Residential Unit on which such construction has been completed.

9.4 APPROVAL OF PLANS: No approval of plans and specifications and no publication of Design Guidelines pursuant to the terms of this Declaration by the Architectural Review Board shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Residential Unit or other improvement built in accordance therewith will be built in a good workmanlike manner. The Declarant, the Association, the Architectural Review Board and the Modifications Committee, if acting, shall not be responsible or liable for (i) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Declaration, (ii) any loss or damages to any person rising out of the approval or disapproval of any plans or specifications, (iii) any loss or damage arising from the non-compliance of such plans and specifications as with any governmental ordinances and regulations, nor (iv) any defects in construction undertaken pursuant to such plans and specifications.

9.5 COMPLIANCE WITH THE LAW: All Residential Units and other structures and improvements shall be constructed, modified, altered or added to in compliance with any and all applicable state, county and municipal zoning and building restrictions and any applicable regulations and restrictions as might apply to the real estate. All grading, clearing, construction of impervious surfaces, building and other construction activity performed on Lots or Residential Units that are subject to the rules, regulations, guidelines and restrictions of any regulatory authority shall be performed in accordance with such rules, regulations, guidelines and restrictions.

9.6 LAND USE AND BUILDING TYPE: The Architectural Review Board shall maintain full discretionary right to alter or amend the Design Guidelines related to standards specified below. Unless otherwise set forth by Declarant in a Supplemental Declaration applicable to a Phase, the following shall be applicable to all Lots:

(a) Structures and Improvements. For purposes of lending assistance to define structures and improvements as required to be approved by the Design Review Board, such structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any Residential Unit or accessory building; exterior alteration of existing improvements; installation or replacement of basketball hoops; swing sets and similar sports and play equipment, clotheslines, garbage cans, wood piles; swimming pools; gazebos or playhouses; window air-conditioners or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials.

(b) In consideration of the foregoing activities requiring prior approval, the Architectural Review Board shall have full authority to enforce, amend or alter the design conventions enforced for each lot as identified on the Lot Portfolios, including but not limited to limits of development, disturbance, clearing and vegetative management. Each owner must strictly comply with the terms of this Section and any Design Guidelines unless approval or waiver in writing is obtained from the Architectural Review Board. The Architectural Review Board may, but is not required to, adopt specific guidelines as part of the Design Guidelines or rules and regulations which address the following items.

(i) Signs: No signs for sale shall be placed on any Lot until Phase One and Phase Two of The Cove Subdivision is 99% sold by Declarant. No sign of any kind shall be erected by an Owner or occupant within any portion of the Properties, without the prior written consent of the Architectural Review Board, except (1) such signs as may be required by legal proceedings; and (2) not more than one professional security sign. This provision shall not apply to entry, directional, or other signs such as for sale signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. No trees that are more than eight (8) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Board, *provided, however*, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the Architectural Review Board.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one (1) approved decorative post light; (3) pathway lighting; (4) seasonal decorative lights during the usual season;

(iv) Accessory Structures. With the approval of the Architectural Review Board, detached accessory structures may be placed on a Lot to be used for a playhouse, swimming pool, tennis court, tool shed, doghouse, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the Architectural Review Board, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in a location approved by the Architectural Review Board. All accessory structures shall be located within side and rear setback lines and within the areas specified on the Lot Portfolios for each lot.

(v) Garages. Unless otherwise stated in the Design Guidelines for specific addresses within the community, or a variance is obtained pursuant to Section 9.10, no front entry garages are permitted. All garages must have doors and each garage door must be coordinated in design and color with the Residential Unit to which it is appurtenant. Each Owner shall provide in respect to each of such Owner's Residential Units parking of at least two (2) automobiles within garages. The garage shall be constructed at the same time that the Residential Unit is constructed and occupancy of the Residential Unit shall not be authorized until the garage is complete.

(vi) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(vii) Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge, shrub, sign, or structure shall be placed or permitted to remain where it would cause a traffic or sight problem. The Design Guidelines may include additional sight line limitations.

(viii) Utility Location. The Owners shall ascertain the location of utility service lines and keep the area over the route, if underground, of said service drops free of excavations and clear of structures, trees and other obstructions; it being understood that the lighting and power company may install, maintain, repair, replace and remove said underground service drops, if any, and open the ground for any such purpose or purposes; and no payment will be due or made by any utility for such use or activity.

(ix) Walls, Fences, and Hedges. All fences and walls shall be subject to standards presented in the Design Guidelines and approved by the Architectural Review Board pursuant to said standards adopted prior to installation. No fence may be installed which will impede the natural flow of water across the Lot. Each Owner shall be responsible for maintaining any wall, fence or hedge as may exist on his or her Lot.

(x) Parking. Each Lot shall have provided thereon adequate off street parking as determined by the Architectural Review Board.

(xi) Driveway Construction. No driveway shall be placed on any Lot nor be connected to any street or road within the Properties until the location and materials on the Lot and street access of such driveway are approved by the Architectural Review Board. In the event there are any concrete curbs in the Properties and such curbs are chipped, cracked and/or broken on the street front side as a result of driveway installation or otherwise, such shall be repaired or replaced at the expense of the Owner of the Residential Unit prior to occupancy of the Residential Unit on said lot.

9.7 VARIANCE: The Architectural Review Board may authorize variances from compliance with any of its guidelines and procedures when circumstances require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Architectural Review Board from denying a variance in other circumstances.

9.8 LIMITATION OF LIABILITY: The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty on the part of the Declarant, the Association, the Board or the Architectural Review Board to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, nor the Architectural Review Board shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the Architectural Review Board, nor any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.7.

9.9 ENFORCEMENT:

(a) The Declarant, any member of the Architectural Review Board or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Architectural Review Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the Architectural Review Board or the Board shall have the right to enter the property pursuant to Section 11.5, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In

addition, the board may enforce the decisions of the Declarant, and the Architectural Review Board by any means of enforcement described in Section 4.5. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment.

(b) Unless otherwise specified in writing by the Architectural Review Board, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

(c) Neither the Architectural Review Board, nor the Association, the Declarant, nor their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Architectural Review Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Architectural Review Board.

ARTICLE 10: EASEMENTS

10.1 DECLARANT'S EASEMENT: Declarant reserves unto itself, its successors and assigns, and reserves and grants unto the Association, a perpetual, alienable and releasable easement and right of way on, over, and under the ground to erect, maintain, and use electric and telephone poles, wires, cables, and conduits, sewers, water mains, and other suitable conduits and equipment for the transmission and discharge of electricity, telephone, gas, sewer, cable television and other public conveniences or utilities on, in, or over all roadway easements within the Subdivision and within the ten (10) foot wide strip immediately inside the boundary of each Lot; provided, in the event of the improvement of one (1) or more Lots as a unit, such easement shall not exist with respect to interior Lot lines unless use of such easement for such purposes has already begun. By reservation of said easements, the Declarant does not obligate its or the Association to provide any utility service to any Lot.

ARTICLE 11: DECLARANT'S RIGHTS

11.1 TRANSFER OR ASSIGNMENT: Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

11.2 DEVELOPMENT AND SALES: The Declarant may maintain and carry on upon the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant has easements over the Properties for access, ingress and conducting such activities. In addition, the Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of the Lots, including, but not limited to, business offices, signs, model Lots, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant shall have easements over the Properties for access, ingress, and egress and use of such facilities. During the Development Period, Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

11.3 IMPROVEMENT TO PROPERTIES: The Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion. The Declarant and its employees, agents and designees shall also have a right and easement over and upon each and every Lot, the boundary line or lines of which form a portion of the perimeter of the Properties, if deemed appropriate by the Declarant, in its sole discretion.

11.4 ADDITIONAL COVENANTS: No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument

recorded by any Person, other than the Declarant pursuant to Section 13.6, may conflict with the Declaration, By-Laws or Charter.

11.5 AMENDMENTS: Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" membership shall be effective during the Development Period without prior notice to and the written consent of the Declarant. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) December 31, 2020, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

11.6 ADDITIONAL COVENANTS AND EASEMENTS BY DECLARANT: The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through General or Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property. Declarant expressly reserves unto itself, its successors and assigns, the right to add additional lands to the Subdivision, and if the Declarant does add additional lands to the Subdivision then the definitions contained hereinabove of "Subdivision" shall be deemed to include the lands so added and the definition contained hereinabove of "Lot" shall include all Lots created within said additional lands. The right herein reserved to the Declarant, its successors and assigns, to add additional lands to the Subdivision may be exercised by its any number of times. Further, Declarant specifically reserves unto itself, its successors and assigns, the right to burden the Subdivision roads, easements and rights of way, by granting easements and rights of way over the same to serve and to be appurtenant to lands added to the Subdivision and lands lying outside the boundaries of the Subdivision.

ARTICLE 12: GENERAL PROVISIONS

12.1 DURATION:

(a) Unless terminated as provided in this Section, or unless otherwise limited by North Carolina law, this Declaration shall have perpetual duration. If North Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each.

(b) Unless otherwise provided by North Carolina law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Lots within the Properties, which instrument is recorded in the Public Records, provided however, regardless of the provisions of North Carolina law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Lots and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, and is recorded in the Public Records.

12.2 AMENDMENT:

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant, during the Development Period, may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Department of Veteran Affairs, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members to correct scrivener's errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendment shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and, during the Development Period, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

12.3 SEVERABILITY: Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

12.4 LITIGATION: Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of members holding seventy-five percent (75%) of the total Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the restrictive covenants, Design Guidelines and Foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

12.5 NON-MERGER: Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successors, but that the estates of the Declarant and individual Lot Owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

12.6 CONFLICT: The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations, and the Association may but shall not be required to, enforce such additional covenants, conditions, and provisions; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any charter, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Charter, and use restrictions and rules of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

12.7 USE OF PROTECTED WORDS: No Person shall use the words "The Cove at Falt Gap" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Owners may use the words "The Cove at Flat Gap" in printed or promotional matter where such terms are used solely to specify

that particular property is located within The Cove at Flat Gap and the Association shall be entitled to use the words "The Cove at Flat Gap" in its name.

12.8 **COMPLIANCE:** Every Owner and occupant of any Lot shall comply with this Declaration. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.5.

12.9 **NOTICE OF SALE:** Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title. The transferor shall continue to be jointly and severally responsible with the transferee and for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

12.10 **VARIANCES:** So long as permitted by North Carolina law and so long as Declarant owns any Lot or interest in property subjected to this Declaration, Declarant may waive or otherwise allow and authorize variances from the terms and restrictions hereof or the terms and restrictions of any Supplemental Declaration as might hereafter be relevant to the Property or any part thereof.

12.11 **MERGER:** Upon application in writing by an Owner of adjoining Lots, the Declarant and, upon assignment of such right, the Board of Directors may authorize the merger of adjoining Lots.

12.12 **RESERVATION FROM LOT CONVEYANCE:** It is expressly agreed and understood that the title conveyed by Declarant to any Lot, Common Area or other parcel of land within the Properties by contract, deed, or other conveyance shall be subject to any easement affecting same for roadways or drainage, access, ingress, egress, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone, or cable television purposes and shall convey no interest in any pipes, lines, poles, or conduits, or in any utility facility or appurtenances thereto, constructed by or under authority of Declarant or any easement owner, or their agents through, along, or upon the premises affected thereby to serve said land or any other portion of the Properties, and where not affected, the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved.

12.13 **INCORPORATION BY REFERENCE:** All dedications, limitations, restrictions, and reservations shown on any recorded Subdivision Plat of the Community as recorded by the Declarant or any recorded plat of a Phase as recorded by Declarant are incorporated herein and made a part hereof as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant and, thereafter, each successive Owner, conveying any of the Properties, whether specifically referred to therein or not.

12.14 INTERPRETATION: In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Class B member, if such membership exists, or directors of the Association if the Class B member is terminated, will best affect the intent of the general plan of the Properties. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date of its filing for record on the records of the Register's Office of Jackson County, North Carolina.

ARTICLE 13: DEFINITIONS

The following terms used in this Declaration are defined as follows:

13.1 "Architectural Review Board": Shall mean and refer to the Board/Committee as empowered in accordance with Article 9 hereof.

13.2 "Association" means The Cove Property Owners Association, Inc.

13.3 "Board of Directors" or "Board": Shall mean and refer to the elected body of the Association having its normal meaning under the North Carolina Nonprofit Corporation Act and Law.

13.4 "By-Laws of the Association" or "By-Laws": Shall mean and refer to those By-Laws of the Association which govern the administration and operation of the Association, as the same may be amended from time to time.

13.5 "Common Area": Shall mean or refer to all real and personal property now and hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Area shall include, but not be limited to, the roads, streets, entrance ways, recreational areas and signage located on property owned by the Association or Declarant.

13.6 "Common Expenses": Shall mean and refer to the actual and estimated expenses of operating the Association and the Community, including any reasonable reserve, all as may be imposed hereunder and found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Charter.

13.7 "Declarant" means Generations Land Companies, LLC., 1998 Hendersonville Rd., Suite 11, Asheville, N.C., 28803.

13.8 "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration.

13.9 "Declaration": Shall mean and refer to this Declaration of Protective Covenants, Conditions and Restrictions and any amendments filed for record in the Public Records of the County.

13.10 "General Assessments": Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots.

13.11 "Lot" means any one or more of the Lots or other tracts or parcels created within the Subdivision or added to the Subdivision including any improvements located thereon.

13.12 "Owner" or "Lot Owner" mean the record owner, whether one or more persons or entities, of any Lot in the Subdivision including a Builder/Owner or any party which has a valid Purchase Contract to any Lot but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

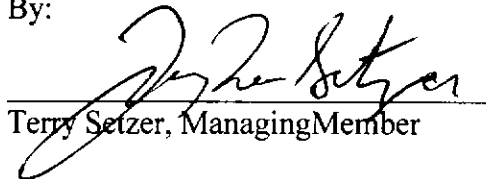
13.13 "Single Family Dwelling" means a residential dwelling for one or more than one person, and if more than one person, persons related to each other by blood, marriage, or legal adoption, or in the alternative, a group of not more than four adult persons not so related who shall maintain a common household in such dwelling and live together as a family unit.

13.14 "Subdivision" means the Lots created within the real property located in Cullowhee Township, Jackson County, North Carolina, as described in deeds recorded June 15, 2006 in Book 1595, Page 88, Book 1595, Page 107, and Book 1595, Page 114, Jackson County Public Registry, known as The Cove at Flat Gap Subdivision.

IN WITNESS WHEREOF Declarant has executed these covenants, conditions and restrictions.

GENERATIONS LAND COMPANIES, LLC.

By:


Terry Setzer, Managing Member

NORTH CAROLINA
JACKSON COUNTY

I, Jane Ahnert, a Notary Public, do hereby certify that

Terry Setzer, Managing Member and Signatory of Generations Land Companies, LLC., a North Carolina Limited Liability Company, personally appeared before me and acknowledged the execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the 22nd day of June, 2006.

Notary Public Jane Ahnert My commission expires: Dec. 8, 2009

